

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DAVID MACDONALD

Plaintiff,

Case No. 07-12022

v.

Honorable Marianne O. Battani
Magistrate Judge Pepe

UNITED PARCEL SERVICE

Defendant.

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**UPS'S RESPONSE TO PLAINTIFF'S MOTION FOR A STAY PENDING APPEAL
WITH RESPECT TO TAXATION OF COSTS**

United Parcel Service, Inc. ("UPS"), by its attorneys Dykema Gossett PLLC, responds as follows to Plaintiff's Motion for a Stay Pending Appeal with Respect to Taxation of Costs (the "Motion").

1. UPS admits Paragraph 1 of the Motion.
2. UPS admits Paragraph 2 of the Motion.
3. UPS admits that on December 14, 2009, and not on December 11, 2009, as asserted by Plaintiff in Paragraph 3 of the Motion, the Court Clerk taxed costs against Plaintiff in the amount of \$7,670.43.

4. UPS admits that Plaintiff is appealing this Court's grant of summary judgment to UPS. UPS further admits that Plaintiff, citing this Court's Bill of Costs Handbook, §I.B. ("the Handbook"), and Fed. R. Civ. P. 62, is moving for "a stay pending appeal with respect to taxation of costs against Plaintiff." (Motion, ¶4.) However, UPS denies that either the Handbook or Fed. R. Civ. P. 62 supports Plaintiff's Motion.

The Handbook (§I.B.) does not authorize a stay but instead merely provides that "[t]he taxation clerk will tax costs even if the case is appealed, unless a stay pending appeal has been granted by the Court." (emphasis added). In other words, the Handbook contemplates a stay by the Court before, and not after the Clerk's taxation of costs, which has already occurred in this case. The Handbook, therefore, provides no authority for the issuance of a stay.

Similarly, under the circumstances, Fed. R. Civ. P. 62 does not support the issuance of a stay. Rather, it provides for a stay pending appeal on the posting of a supersedeas bond. Fed. R. Civ. P. 62(d). Plaintiff has not posted a bond. Thus, no authority relied upon by Plaintiff supports the issuance of a stay.

5. UPS admits Paragraph 5 of the Motion.

WHEREFORE, UPS respectfully requests that Plaintiff's Motion be denied.

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**UPS'S BRIEF IN SUPPORT OF ITS RESPONSE TO PLAINTIFF'S MOTION FOR A
STAY PENDING APPEAL WITH RESPECT TO TAXATION OF COSTS**

ISSUES PRESENTED

1. Whether, pursuant to this Court's Bill of Costs Handbook, §I.B. and Fed. R. Civ. P. 62, Plaintiff may obtain a stay with respect to the taxation of costs pending his appeal of this Court's granting of summary judgment to Defendant United Parcel Service, Inc.?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Fed. R. Civ. P. 62(d)

Bill of Costs Handbook, United States District Court for the Eastern District of Michigan

Hamlin v. Charter Tp. of Flint, 181 F.R.D. 348 (E.D. Mich. 1998)

Enserch Corp. v. Shand Morahan and Co., 918 F.2d 462 (5th Cir. 1990)

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Plaintiff has provided no authority or any persuasive argument supporting his request for a stay of the costs taxed by the Clerk. Rather Plaintiff merely states that he is appealing and then cites authority that does not support the entry of a stay under the circumstances of this case. For those reasons alone, a stay should not be entered.

Equally important, Fed. R. Civ. P. 62 “establishes the general rule that losing parties in the district court can obtain a stay pending appeal only by giving a supersedeas bond.” *Hamlin v. Charter Tp. of Flint*, 181 F.R.D. 348 (E.D. Mich. 1998) (quoting *Enserch Corp. v. Shand*

Morahan and Co., 918 F.2d 462 (5th Cir. 1990)). Plaintiff has not posted a bond.

For the foregoing reasons, Plaintiff's Motion should be denied.

DYKEMA GOSSETT PLLC

s/ F. Arthur Jones II

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CERTIFICATE OF SERVICE

I certify that on the 5th day of January, 2010, the foregoing was filed electronically.
Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

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